

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

CIVIL ACTION NO. 3:17-cv-05806-RJB

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

DECLARATION OF ANDREA  
BRENNEKE IN SUPPORT OF STATE  
OF WASHINGTON'S MOTION TO  
COMPEL PARTIALLY  
UNREDACTED LETTER AND  
UNDERLYING FINANCIAL  
CALCULATIONS

NOTE ON MOTION CALENDAR:  
September 4, 2020

Pursuant to 28 U.S.C. § 1746(2), I, Andrea Brenneke, state and declare as follows:

1. I am over eighteen years of age, have personal knowledge of and competent to testify about the matters contained herein.

2. I am an Assistant Attorney General for the Attorney General of Washington and I represent the State of Washington in this matter.

3. The State of Washington has pursued discovery, motions to compel, and defense of a Ninth Circuit Writ of Mandamus to obtain financial information related to GEO's Voluntary

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1 Work Program at the NWDC, the amount and value of detainee labor there, and GEO's benefit  
2 from that labor.

3 4. As described below, Washington also has made repeated requests for the financial  
4 documents at issue in this motion and engaged in discovery conferences with GEO's counsel in  
5 an effort to resolve the dispute. Washington's attempts to resolve this dispute without judicial  
6 intervention have been unsuccessful.

7 5. Separate from GEO's own discovery responses, and as a result of another group's  
8 Freedom of Information Act (FOIA) request, Washington obtained a letter from GEO to ICE  
9 dated May 30, 2018. *See* ECF No. 362-1 (GEO's Letter to ICE). Washington produced GEO's  
10 Letter to ICE, and the entire set of FOIA documents in which this letter was included, in  
11 discovery to GEO on June 19, 2019 (corrected June 21, 2019) as part of Washington's  
12 Production No. 14.

13 6. The version of GEO's Letter to ICE that we have is redacted in relevant part. In  
14 it, GEO states that "[w]e have conducted an estimation of the costs necessary to achieve  
15 compliance with the Plaintiffs" in this and the other two other Minimum Wage/Unjust  
16 Enrichment lawsuits. The paragraph that immediately follows presumably includes the  
17 substance of those calculations, but is redacted. *Id.*

18 7. On June 5, 2019, Washington, through its counsel Marsha Chien, wrote to former  
19 GEO Counsel, Shannon Armstrong, regarding GEO's Letter to ICE with the "request that GEO  
20 provide the complete, un-redacted document as well as any related communications with ICE"  
21 as responsive to Washington's discovery requests, including RFP No. 12. If any privileges apply,  
22 please specify them." A true and correct copy of Washington's June 5, 2019 email is attached as  
23 Exhibit A.

24 8. On June 10, 2019, GEO responded by email that "GEO has complied with its  
25 discovery obligations" by objecting to RFP No. 12 "as overly broad, unduly burdensome, and  
26 not proportional to the needs of the case," by promising GEO "would produce non-privileged

1 communications with ICE concerning the Voluntary Work Program ‘as they relate to detainee  
2 participation and compensation at the Northwest Detention Center within the relevant time  
3 period,’” and by notifying the State “that it was withholding documents based on that objection  
4 in February 2018.” GEO never produced a privilege log, identified with particularity any  
5 responsive documents that existed, nor asserted any privileges. A true and correct copy of GEO’s  
6 June 10, 2019 email is attached as Exhibit B.

7 9. GEO’s Writ of Mandamus was pending with the Ninth Circuit Court of Appeals  
8 from January 1, 2019 to September 3, 2019, during most of the discovery period.

9 10. After Washington prevailed, we again requested that GEO produce the  
10 responsive financial documents GEO withheld during the Mandamus proceedings. GEO agreed  
11 to produce the documents on or before November 21, 2019, and the parties filed a stipulation to  
12 that effect, ECF No. 336.

13 11. In November of 2019, Defendant GEO produced additional, responsive financial  
14 documents. Washington reviewed those documents and again initiated LCR 37 discovery  
15 conferences with GEO to address deficiencies in the production.

16 12. On December 13, 2019, Washington sent a letter regarding the deficiencies and  
17 specifically followed up on its effort to obtain an unredacted version of GEO’s Letter to ICE and  
18 its underlying calculations. A true and correct copy of Washington’s letter is attached as  
19 Exhibit C.

20 13. New GEO counsel, Adrienne Scheffey, was unaware of GEO’s Letter to ICE and  
21 requested the bates number. A true and correct copy of GEO’s December 31, 2019 letter is  
22 attached as Exhibit D.

23 14. Also on December 31, 2019, I sent an email with the bates number and a second  
24 email in which I forwarded the pre-Writ of Mandamus email exchange about GEO’s Letter to  
25 ICE to current GEO Counsel with a renewed request for the document. True and correct copies  
26 of my December 31, 2019 emails are attached as Exhibit E.

1           15.     Washington received a response to its request for post-Mandamus production of  
2 financial information by letter dated January 8, 2020. A true and correct copy of GEO's January  
3 8, 2020 letter is attached as Exhibit F. In it, GEO states "the letter estimates legal costs for  
4 defending various lawsuits" and that the redacted portion of the letter at issue here "provides a  
5 summary of the relief requested by Plaintiffs (in the aggregate)."

6           16.     Washington listed GEO's Letter to ICE as Plaintiffs' Trial Exhibit 365, it is  
7 included in the Joint Exhibit List, ECF No. 377-1, as incorporated in the Pretrial Order. ECF No.  
8 388 at 30.

9           17.     At the pretrial conference held on January 10, 2020, Washington requested the  
10 Court's intervention with regard to GEO's Letter to ICE. A true and correct copy of excerpts of  
11 the transcript are attached at Exhibit G. After limited presentation of the discovery dispute by  
12 Counsel, the Court requested the parties to try again to resolve the dispute and to "make a  
13 motion" if they could not agree. *See* Ex. G at 53:3-56:4.

14           18.     On Wednesday, January 15, 2020, Washington again wrote "to follow up  
15 regarding GEO's letter request to ICE for an equitable adjustment, labeled 2018-ICLI-000052,"  
16 noted that the document is not privileged in any way, and requested that it be produced. A true  
17 and correct copy of the email is attached at Exhibit H.

18           19.     On Friday, January 17, 2020, GEO again refused to produce the document,  
19 claiming "the document is not relevant to the State's case and is not broken down or limited to  
20 the Northwest ICE Processing Center. Furthermore, the document is not relevant to the State's  
21 claims that GEO was unjustly enriched, as it simply states the status of the costs of litigation and  
22 the costs that ICE *could* incur nationwide if litigation were to change its operating practices." A  
23 true and correct copy of GEO's email of January 17, 2020 is attached as Exhibit I.

24           20.     Because of GEO's representations about the content of the letter, Washington set  
25 aside its pursuit of a motion to compel additional documents at that time and both parties engaged  
26 in pretrial preparations and briefing.

21. The Court's Motion in Limine Order incorporates by reference rulings made during the April 13, 2020 pretrial hearing. ECF No. 374. A true and correct excerpts of the April 13, 2020 Pretrial Hearing transcript are attached as Exhibit J.

22. On April 13, 2020, the Court denied Washington's MIL to exclude the testimony of a late-noted witness, GEO's CFO Brian Evans, with the proviso that Washington be permitted to depose him. *See* Ex. J at 9:25-10:7.

23. On June 11, 2020, Washington deposed Mr. Evans. True and correct excerpts of the Brian Evans deposition transcript are attached at Exhibit K. Exhibit K has been filed under seal pursuant to the Protective Order, ECF No. 70.

24. During the deposition, Mr. Evans revealed new information related to the calculations he had conducted related to the NWDC that were rolled into GEO's Letter to ICE. After obtaining and reviewing the deposition transcript, I sent an email to GEO and again renewed efforts to obtain a partially unredacted copy of GEO's Letter to ICE and the underlying calculations and spreadsheets related to the calculation of compliance with plaintiffs' demands. GEO responded with an agreement to meet and confer. A true and correct copy of this email thread dated August 3, 2020 is attached as Exhibit L.

25. During the LCR 37 conference on August 7, 2020, GEO, through its counsel Adrienne Scheffey, reiterated its position that it would not produce a partially unredacted version of GEO's Letter to ICE or any of the underlying spreadsheets regarding the amount it would take to comply with Plaintiff's demands of Minimum Wage Act compliance at the NWDC. GEO referred Plaintiffs to the position it took in its January 17, 2020 email and indicated it was relying on that position. GEO also claimed that the portion of the letter related to the calculation of the amount needed "to achieve compliance with the plaintiffs" includes only two to three "aggregate numbers" with no breakdown related to the NWIPC, and constitutes an aggregate amount of "damages" related to the detainee wage claims in all three states.

26. For the first time in the August 7, 2020 LCR 37 conference, GEO asserted that that the letter was protected from production by attorney-client, work product, and “common interest” privilege. GEO claimed that a “common interest” and “work product” privilege exists between GEO, ICE and the DOJ in relation to the litigation, but admitted there is no written common interest agreement. GEO also articulated that the letter is protected from disclosure by the “attorney client privilege” because Mr. Evans conducted the underlying damages analysis before May 30, 2018, at the direction of GEO’s inside and possibly outside counsel, for the sole purpose of writing this letter, and the “whole letter was written by counsel” to seek legal intervention from ICE.

27. In discovery, GEO did not produce GEO’s Letter to ICE. I have reviewed the privilege logs produced by GEO in the litigation and have found no log on which this letter was disclosed or a privilege asserted regarding it. Nowhere on the privilege log are the underlying calculation documents disclosed as privileged, either.

28. On its privilege log, GEO did list a *draft* letter to DHS (ICE), and claimed privilege regarding it, presumably because it was a draft circulated within GEO. However, GEO also produced the *final* version of GEO’s February 14, 2018 letter to ICE, in which GEO requested an equitable adjustment and intervention in this lawsuit and the other detainee wage litigation, and detailed the attorneys’ fees and costs expended in that litigation to date, without any redactions or claims of privilege.

I declare, under the penalty of perjury under the laws of the United States and the State of Washington, that the foregoing is true and correct.

Dated this 20th day of August 2020 in Seattle, Washington.

s/ Andrea Brenneke  
ANDREA BRENNEKE, WSBA No. 22027

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 20th day of August 2020 Seattle, Washington.



Caitlin Hall  
Legal Assistant